



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.35 of 2011

1.Seetharama Gounder  
2.Thamaraikannan

... Appellants/Defendants

-Versus-

1.Ramanuja Gounder  
2.Purushothaman  
3.Radhakrishnan

... Respondents/Plaintiffs

This second appeal is filed against the judgment and decree dated 24.08.2010 made in A.S.no.15 of 2009 by the learned Additional District Judge, Fast Track Court No.I, Tindivanam, Villupuram District, reversing the judgement and decree dated 02.01.2008 made in O.S.No.53 of 2001 by the learned District Munsif cum Judicial Magistrate, Vanur, Villupuram District.

For Appellants : Mr.A.K.Kumaraswamy

For Respondents : Mrs.N.Mala

JUDGMENT

The defendants in O.S.No.53 of 2001 on the file of the learned District Munsif-cum-Judicial Magistrate, Vanur, Villupuram District, are the appellants herein. The respondents are the plaintiffs in the suit. The respondents filed the said suit for declaration of title and for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. The trial court, by decree and judgement dated 02.01.2008, dismissed the suit. As against the same, the plaintiffs filed an appeal in A.S.No.15 of 2009 before the learned Additional District Judge, Fast Track Court No.I, Tindivanam. By decree and judgement dated 24.08.2010, the learned Additional District Judge set aside the decree and judgement of the trial court and decreed the suit as prayed for in respect of 7.5 cents out of 19 cents in favour of the plaintiffs and curiously granted decree declaring that the 1<sup>st</sup> defendant is entitled for 19 cents as per Ex.B.1 Sale Deed dated 23.05.1990. As against the said decree and judgement, the defendants are now before this court with this second appeal.



2. The case of the plaintiffs in brief is as follows:- The suit property and a few more properties were originally owned by one Theivanayaga Gounder. The said Theivanayaga Gounder died leaving behind his two sons by name (1) Ramanuja Kounder [1<sup>st</sup> plaintiff] and Arikrishna Kounder. There was an oral partition between the 1<sup>st</sup> plaintiff - Ramanuja Kounder and Arikrishna Kounder in the year 1972, in which, the entire property measuring 19 cents was allotted to Ramanuja Kounder, who is the 1<sup>st</sup> plaintiff herein. The plaintiffs 2 and 3 are the children of the 1<sup>st</sup> plaintiff. According to the plaintiffs, they have been in exclusive possession and enjoyment of the property from the year 1972 onwards [i.e., from the date of partition]. It is the further case of the plaintiffs that Arikrishna Kounder had a wife by name Mrs. Andal. The defendants are the brothers of Mrs. Andal. They got no right whatsoever over the suit property, it is contended.

3. The case of the defendants is that the partition, which is pleaded in the plaint, is not true. According to them, in the oral partition, the entire extent of the suit property measuring 19 cents was allotted to Arikrishna Kounder. The said Arikrishna Kounder and his wife executed a sale deed [Ex.B.1] on 23.05.1990 in favour of the 1<sup>st</sup> defendant. Thus, by virtue of Ex.B.1 sale deed, according to the defendant, the 1<sup>st</sup> defendant has become absolute owner of the same and has been in possession and enjoyment of the same. It is the further case of the defendants that the plaintiffs have got no right whatsoever over the suit property.

4. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, as many as 3 witnesses including the plaintiffs were examined and 5 documents were exhibited. On the side of the defendants as many as 4 witnesses including the defendants were examined and 7 documents were exhibited. Having considered the above, the trial court dismissed the suit, which was reversed by the first appellate court. But, strangely, the first appellate court granted decree in favour of the plaintiffs as well as the 1<sup>st</sup> defendant. That is how, the defendants are now before this court with this second appeal.

5. In this second appeal, the following substantial questions of law has arisen for consideration:-

[1] Whether first appellate court was right in granting decree for 19 cents in the suit survey number in favour of the 1<sup>st</sup> defendant when the defendants had not made any counter claim in the suit?

[2] Whether the first appellate court was right in holding that the 1<sup>st</sup> defendant is entitled for 19 cents after having granted decree for 7.5 cents in favour of the plaintiffs when the total extent of the property itself is only 19 cents?



WEB COPY

[3] Whether the first appellate court was right in holding that the oral partition is not true based on Ex.B.1 sale deed wherein the 1<sup>st</sup> defendant has pleaded that in the oral partition the entire extent of 19 cents was allotted to the share of the 1<sup>st</sup> defendant?

6. The learned counsel on either side argued the matter at length. To answer these questions of law, I do not find any difficulty, the reason being that the first appellate court ought to have granted decree in favour of the 1<sup>st</sup> defendant when the 1<sup>st</sup> defendant did not make any counter claim at all for 19 cents by paying necessary court fees. It is strange and also shocking that the first appellate court granted decree in favour of the 1<sup>st</sup> defendant in respect of 19 cents in the suit filed by the plaintiffs.

7. Nextly, admittedly, the total extent of the suit property in the suit survey number is only 19 cents. The first appellate court has granted decree for declaration of title and also for injunction in respect of 7.5 cents in favour of the plaintiffs. Having decreed so, it is not understandable as to how the first appellate court has held that the 1<sup>st</sup> defendant is entitled for 19 cents. It is not as though 7.5 cents for which decree has been granted in favour of the plaintiffs and 19 cents for which decree has been granted in favour of the 1<sup>st</sup> defendant are two different properties. It is quite obvious that the first appellate court has granted decree both for the plaintiffs as well as the 1<sup>st</sup> defendant for one and the same property. So far as the oral partition is concerned, of course, it is the burden of the plaintiffs to prove that there was oral partition, in which, the entire extent of 19 cents was allotted to the 1<sup>st</sup> plaintiff. Equally, when the defendants admitted that there was oral partition and in that oral partition, the entire extent of 19 cents was allotted only to Arikrishna Kounder, they should also discharge their onus to prove that Ex.B.1 would convey title to the 1<sup>st</sup> defendant. This could be possible if only the defendants are able to establish that in the oral partition, the entire extent of 19 cents was allotted to Arikrishna Kounder. Without considering all these factual aspects and by committing grave illegalities as narrated above, the first appellate court has reversed the decree and judgement of the trial court and it has granted decree both in favour of the plaintiffs and in favour of the 1<sup>st</sup> defendant. Therefore, I have no hesitation to set aside the decree and judgement of the first appellate court in its entirety and to remand back the matter to the first appellate court for fresh disposal in accordance with law. While doing so, the first appellate court shall permit the parties to let in additional evidence, if any, both oral and documentary, and also frame appropriate additional issues, if need be, and then the first appellate court shall decide the appeal suit in accordance with law. Though the conduct of the learned Additional District Judge, who has authored the judgment of the first appellate court, deserves



to be proceeded against departmentally, taking a lenient view, I do not recommend for the same hoping that this kind of error shall not be committed in future.

8. In the result, the second appeal is allowed and the judgement and decree dated 24.08.2010 made in A.S.No.15 of 2009 by the learned Additional District Judge, Fast Track Court No.I, Tindivanam, Villupuram District, are hereby set aside. The appeal in A.S.No.15 of 2009 is remanded back to the first appellate court, who shall dispose of the appeal afresh in accordance with law within a period of four months from today. It is further directed that the parties are at liberty to let in additional evidence, both oral and documentary, if any, before the first appellate court and the first appellate court shall be at liberty to frame appropriate additional issues, if need be, and then decide the appeal suit in accordance with law as indicated above. No costs.

Sd/-  
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Addl. District Judge, FTC No.I, Tindivanam, Villupuram District.

2.The District Munsif-cum-Judicial Magistrate, Vanur, Villupuram District.

+1 cc to M/s.A.K.Kumarasamy, Advocate, SR.12141

+1 cc to M/s.N.Mala, Advocate, SR.12143.

tej(co)  
krd 17/4

Second Appeal No.35 of 2011